

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

In re: PHARMACEUTICAL INDUSTRY AVERAGE WHOLESAL PRICE LITIGATION)	
)	
)	MDL No. 1456
)	Master Case No. 01-12257-PBS
)	
THIS DOCUMENT RELATES TO:)	Subcategory Case No. 06-11337-PBS
)	
<i>United States of America ex rel. Ven-a-Care</i>)	
<i>of the Florida Keys, Inc. v. Dey, Inc., et al.,</i>)	
Civil Action No. 05-11084-PBS, and)	
)	
<i>United States of America ex rel. Ven-a-Care</i>)	
<i>of the Florida Keys, Inc. v. Boehringer</i>)	
<i>Ingelheim Corporation, Inc., et al.,</i> Civil)	
Action No. 07-10248-PBS)	
)	

JOINT MOTION TO MODIFY PRETRIAL ORDER

The parties to the above-captioned actions hereby move to modify the Pretrial Order dated October 20, 2009 (Master Dkt #6613, Sub. #508), in accordance with the attached proposed schedule. The parties have reached agreement on changes that would advance a number of due dates so that the various pretrial tasks are more staggered. In addition, the defendants propose (without objection by plaintiffs) to add a new April 12, 2010, deadline for limited “fairness/completeness counter-counter designations” of deposition testimony, and to move the April 9 deadline for objections to counter-designations to the same April 12 date. The parties further propose to add a new April 15, 2010, deadline for objections to counter-counter designations. On each of these dates, the parties propose serving charts containing each party’s designations. The parties further propose that on April 19, 2010, the parties file the charts containing each party’s designations with the Court via ECF, and submit to the Court CDs

containing deposition transcript excerpts. The parties believe that submitting transcript designations to the Court after all rounds of designation have been completed will lessen the burden on the parties and the Court, and will reduce confusion. Due to the potential volume of transcript designations, the parties propose submitting to the Court excerpts containing the designated testimony for each witness, rather than filing via ECF either full transcripts or transcript excerpts. The proposed changes would not affect the deadlines set by the Court for filing the joint pre-trial memorandum, motions in limine and oppositions thereto, and trial briefs.

Respectfully submitted,

<p>TONY WEST ASSISTANT ATTORNEY GENERAL</p> <p>CARMEN M. ORTIZ UNITED STATES ATTORNEY</p> <p>By: <u>/s/ George B. Henderson, II</u></p> <p>George B. Henderson, II Assistant U.S. Attorney United States Courthouse 1 Courthouse Way, Suite 9200 Boston, MA 02210 Telephone: (617) 748-3282</p>	<p>FOLEY HOAG LLP</p> <p>By: <u>/s/ Martin F. Murphy</u> Martin F. Murphy BBO 363250 Robert E. Toone BBO 663249 Seaport World Trade Center West, 155 Seaport Boulevard Boston, MA 02210-2600 Telephone: (617) 832-1000 Facsimile: (617) 832-7000</p>
<p>LAURIE A. OBEREMBT Civil Division Commercial Litigation Branch P. O. Box 261 Ben Franklin Station Washington, D.C. 20044</p>	<p>KELLEY DRYE & WARREN LLP</p> <p>Paul F. Doyle William A. Escobar Neil Merkl Sarah Reid Christopher Palermo 101 Park Avenue New York, NY 10178 Telephone: (212) 808-7800 Facsimile: (212) 808-7897 Counsel for Dey, Inc.</p>

<p>FOR THE RELATOR</p> <p>James J. Breen Allison Warren Simon The Breen Law Firm, P.A. 5755 Northpoint Parkway, Suite 260 Alpharetta, GA 30022 Telephone: (770) 740-000</p> <p>Gary Azorsky Susan Schneider Thomas Berger & Montague, P.C. 1622 Locust St. Philadelphia, PA 19103 Telephone: (215) 875-3090</p> <p>Dated: March 8, 2010</p>	<p>KIRKLAND & ELLIS LLP</p> <p>By: <u>/s/ Helen E. Witt</u> Helen E. Witt Eric Gortner John Reale 300 N. LaSalle Chicago, IL 60654 Telephone: (312) 862-2000</p> <p>Counsel for Boehringer Ingelheim Corporation, Inc., <i>et al.</i></p>
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CERTIFICATION

The undersigned counsel certifies pursuant to LR 7.1(A)(2) that counsel have conferred concerning this motion.

/s/ George B. Henderson, II
George B. Henderson, II

CERTIFICATE OF SERVICE

I hereby certify that I have this day caused an electronic copy of the above document to be served on all counsel of record via electronic service pursuant to Paragraph 11 of Case Management Order No. 2 by sending a copy to LexisNexis File & Serve for posting and notification to all parties.

Dated: March 8, 2010

/s/ George B. Henderson, II
George B. Henderson, II

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PROPOSED ORDER

Upon consideration of the Joint Motion to Modify Pretrial Order, it is hereby ORDERED
that the dates are modified as set forth in the attached schedule.

This _____ day of _____, 2010.

PATTI B. SARIS
UNITED STATES DISTRICT JUDGE